

Appln. No. 10/066,827
Amdt. dated: July 19, 2004
Reply to Office Action dated April 23, 2004

REMARKS

These remarks are set forth in response to the Office Action dated April 23, 2004. At the time of this Office Action, claims 22-27 were allowed. Claims 1-6, 9, 10 and 19-21 were rejected. Claims 7 and 8 were objected to. This response is timely filed. Please charge any underpayments, or credit any overpayments to Deposit Account number 50-2884.

Claim Rejections Under 35 U.S.C. §103(a)

Claims 1-6, 9, 10 and 19-21 were rejected under 35 U.S.C. §103(a) as being obvious over U.S. Patent No. 6,497,190 to Lewit (hereinafter "Lewit") in view of U.S. Patent No. 5,262,230 to Becker (hereinafter "Becker"). However, Applicant respectfully submits that Lewit is improperly cited as a reference against the claimed invention in the present case.

The Examiner has noted that, based on the earlier effective filing date of Lewit, that reference constitutes prior art only under 35 U.S.C. §102(e). Applicant agrees. Lewit is clearly not prior art under 35 U.S.C. §102(a) because Applicants' filing date of February 4, 2002, is before the issue date of Lewit which is December 24, 2002. Likewise, Lewit cannot be prior art under 35 U.S.C. §102(b) since Lewit was not patented or published more than one year prior to the date of the present application. Accordingly, Lewit is prior art, if at all, only under 35 U.S.C. §102(e).

Significantly, it is stated in 35 U.S.C. §103(c) that subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under [§103] where the subject matter and the claimed invention were, at the time the invention was made,

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owned by the same person or subject to an obligation of assignment to the same person.


In the present case, the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. The Lewit reference is assigned to Compsys, Inc. of Melbourne, Florida - the same assignee to which the present application has been assigned. A copy of the Assignment document and the associated Notice of Recordation for the present application are provided herewith as evidence of the foregoing.

For the foregoing reasons, Applicant respectfully submits that Lewit cannot preclude patentability of Applicants' invention. Accordingly, Applicant respectfully submits that the rejection of claims 1-6, 9, 10 and 19-21 under 35 U.S.C. §103 should be withdrawn.

No new matter is added. Applicants have made every effort to present claims which distinguish over the prior art, and it is believed that all claims are in condition for allowance.

Respectfully submitted,

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